

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE -  
TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| Article 21                  | Amend                    |
| R15-5-2104                  | Amend                    |
| R15-5-2105                  | Amend                    |
| R15-5-2106                  | Amend                    |
| R15-5-2107                  | Amend                    |
| R15-5-2108                  | Repeal                   |
| R15-5-2110                  | Amend                    |
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statutes: A.R.S. §§ 42-105, 42-1303  
Implementing statute: A.R.S. § 42-1310.03
3. The effective date of the rules:  
October 17, 1997.
4. A list of all previous notices appearing in the Register addressing the final rule:  
1 A.A.R. 2959, December 29, 1995  
3 A.A.R. 486, February 21, 1997
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
Name: Holly Unck, Tax Analyst  
Address: Tax Research and Analysis Section  
Department of Revenue  
1600 West Monroe  
Phoenix, Arizona 85007  
Telephone: (602) 542-4672  
Fax: (602) 542-4680
6. An explanation of the rule, including the agency's reasons for initiating the rule:  
The rules provide guidance in the application of the transaction privilege tax to persons engaged in business under the utilities classification. As a result of the Department's 5-year review of Article 21, the Department is repealing and amending antiquated and repetitive rules.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:  
Not applicable.
8. The summary of the economic, small business, and consumer impact:  
Identification of the rulemaking:  
As a result of the Department's 5-year review of Article 21, the Department is repealing and amending antiquated and repetitive rules under the utilities classification.  
Summary of information in the Economic, Small Business, and Consumer Impact Statement:

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The benefits of the rules are greater than the costs. The repeal of the obsolete rule will benefit the public by eliminating a rule that no longer serves its intended purpose. Additionally, the adoption of the amended rules will provide better guidance to taxpayers leading to fewer protests and appeals resulting in cost savings for taxpayers.

The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the repeal and amendment of these rules.

**9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

No substantive changes have been made in the text of the adopted rules from that in the proposed rules. Minor changes to the language of the rules were made to improve clarity and conciseness of the rules without changing the meaning or intent of the rules. The changes include:

**R15-5-2104.** Language relating to the constitutions of the United States and the State of Arizona were deleted. Information regarding exactly when sales in interstate commerce were subject to Arizona's transaction privilege tax was added to provide clear and specific guidance to taxpayers.

**R15-5-2105.** Changed the title of the rule from "Delivered Utilities" to "Locally Delivered Utilities" to clarify that the rule is limited to utility services delivered in Arizona. The words "unless an exemption applies" were added to reflect the fact that under certain circumstances sales of utilities in Arizona are not subject to transaction privilege tax.

**R15-5-2107.** The title of the rule was changed from "Sales to Irrigation Projects" to "Sales to Irrigation Districts" to clarify that the rule is referring to "irrigation districts" as described in A.R.S. §§ 48-2901 et seq. and 48-3401 et seq. The words "unless an exemption applies" were added to the rule to reflect the fact that under certain circumstances sales of utilities to irrigation districts are not subject to transaction privilege tax.

**10. A summary of the principal comments and the agency response to them:**

Paragraph 9 above describes many of the comments DOR received and how DOR responded to the comment by making a particular change. This paragraph describes comments that DOR received where DOR decided not to make the requested change.

Ann M. Dummenil, representative for Southwest Gas Corporation, commented that the deregulation of the utility industry has resulted in fundamental problems with the current state sales and use tax treatment of utilities with the result that local utilities are placed at a competitive disadvantage. However, these fundamental problems arise from the statutes imposing the transaction privilege and use taxes. The Department of Revenue is an administrative agency and must administer the laws as enacted by the Arizona legislature.

Ms. Dummenil also requested the Department to put a "hold" on any further review or amendment to the administrative rules relating to the utility classification. The Department decided to proceed with the rule action because while rules are in force, the Administrative Procedures Act requires that they be clear, concise, and understandable. If for any reason the rules become obsolete, the Department will amend or repeal them at that time.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

**12. Incorporations by reference and their location in the rules:**

None.

**13. Was the rule previously adopted as an emergency rule?**

No.

**14. The full text of the rules follows:**

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**ARTICLE 21. ~~Sales Tax~~—UTILITIES CLASSIFICATION**

**Section**

- R15-5-2104. Interstate and ~~foreign sales~~ Foreign Sales  
R15-5-2105. ~~Local Sales~~ Locally Delivered Utilities  
R15-5-2106. Compressed and bottled liquids Bottled Liquids  
R15-5-2107. ~~Sale Sales to irrigation project~~ Irrigation Districts  
R15-5-2108. ~~Sales by Bureau of Reclamation~~ Repeal  
R15-5-2210. Security deposits Deposits

**ARTICLE 21. ~~Sales Tax~~—UTILITIES CLASSIFICATION**

**R15-5-2104. Interstate and ~~foreign sales~~ Foreign Sales**  
Sales A person engaged in business under the utilities classification may deduct from the tax base gross receipts from sales of electricity, gas, or water, delivered by the producer or distributor through transmission lines or pipelines to a point in another state or country, from a point in this state and used outside this state, are not subject to the Sales Tax.

**R15-5-2105. ~~Local Sales~~ Locally Delivered Utilities**  
Sales A person engaged in business under the utilities classification is subject to tax on the gross receipts from sales of electricity, gas, or water, produced outside this state and ~~that is~~ delivered by

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~~the producer through transmission lines or pipelines to a point in this state, when used for use in this state, are subject to tax unless an exemption applies.~~

**R15-5-2106. ~~Compressed and bottled liquids~~ Bottled Liquids**  
~~Bottled gases used in manufacturing, heating, cooking, or for any other purpose and bottle water when sold to a consumer, except bottled water sold for home consumption by humans, are taxable under the retail classification (see Articles 18 and 18.1). The gross receipts from sales of bottled gases and bottled water are subject to tax under the retail classification unless otherwise exempt.~~

**R15-5-2107. ~~Sale~~ Sales to irrigation project Irrigation Projects**

~~Any person who produces and furnishes or furnishes A person engaged in business under the utilities classification is subject to tax on the gross receipts from producing and furnishing or furnishing electricity or gas to an irrigation project district for the purpose of producing water for irrigation of farm lands or of lands subdivided for residential purposes which are entitled to irrigation water, is subject to the tax imposed under this classification unless an exemption applies.~~

**R15-5-2108. ~~Sales by Bureau of Reclamation~~**

~~Sales of electricity made to consumers by the United States Bureau of Reclamation are not taxable.~~

**R15-5-2210. ~~Security deposits~~ Deposits**

~~Receipts of Gross receipts from customer deposits that are held as security for payment of utility billings are not subject to tax until recognized as earned income. A deposit that is not applied to a customer's bill or refunded to a customer when utility services are discontinued shall be presumed to be abandoned property if the~~

~~customer does not claim it within the period established under A.R.S. Title 44, Chapter 3. Customer deposits that are presumed to be abandoned property under A.R.S. Title 44, Chapter 3, shall be reported and delivered to the Department as unclaimed property. Amounts delivered to the Department as unclaimed property are not included in the tax base. For example:~~

- ~~1. A utility company requires a new customer to deposit \$150 before it provides utility service. The customer moves and notifies the utility company to discontinue service. The customer's final bill is \$130. The utility applies the deposit to the final bill and refunds \$20 to the customer. The amount applied to the utility bill is recognized as income and subject to tax. The amount refunded to the customer is not recognized by the utility as income and is not subject to tax.~~
- ~~2. A utility company requires a new customer to deposit \$150 before it provides utility service. The customer notifies the utility company to discontinue service. The customer's final bill is \$130. The utility applies the deposit to the final bill. The customer does not provide a forwarding address to the utility. Therefore, the utility company is not able to refund the remaining \$20 to the customer. The amount applied to the utility bill is recognized as income and subject to tax. The remaining \$20 is presumed to be abandoned property if not claimed under A.R.S. Title 44, Chapter 3. The amount presumed to be abandoned property shall be reported and delivered to the Department as unclaimed property under A.R.S. Title 44, Chapter 3. The amount delivered to the Department as unclaimed property is not recognized as income by the utility and is not subject to tax.~~